

(CPSA) (15 U.S.C. 2075), section 18 of the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261n), section 16 of the Flammable Fabrics Act (FFA) (15 U.S.C. 1203), and section 7 of the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1476), all as amended.

§ 1061.2 Definitions.

For the purposes of this part:

(a) *Commission* means the Consumer Product Safety Commission.

(b) *Commission's statutory preemption provisions* and *statutory preemption provisions* means section 26 of the CPSA (15 U.S.C. 2075), section 18 of the FHSA (15 U.S.C. 1261n), section 16 of the FFA (15 U.S.C. 1203) and section 7 of the PPPA (15 U.S.C. 1476).

(c) *Commission statute, standard, or regulation* means a statute, standard, regulation, or requirement that is designated as having a preemptive effect by the Commission's statutory preemption provisions.

(d) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(e) *Local government* means any political subdivision of a State having the authority to establish or continue in effect any standard, regulation, or requirement that has the force of law and is applicable to a consumer product.

(f) *State or local requirement* means any statute, standard, regulation, ordinance, or other requirement that applies to a product regulated by the Commission, that is issued by a State or local government, and that is intended to have the force of law when in effect.

§ 1061.3 Statutory considerations.

(a) The Commission's statutory preemption provisions provide, generally, that whenever consumer products are subject to certain Commission statutes, standards, or regulations, a State or local requirement applicable to the same product is preempted, i.e., superseded and made unenforceable, if both are designed to protect against the same risk of injury or illness, unless the State or local requirement is iden-

tical to the Commission's statutory requirement, standard, or regulation. A State or local requirement is not preempted if the product it is applicable to is for the State or local government's own use and the requirement provides a higher degree of protection than the Commission's statutory requirement, standard, or regulation.

(b) The Commission's statutory preemption provisions provide, generally, that if a State or local government wants to enforce its own requirement that is preempted, the State or local government must seek an exemption from the Commission before any such enforcement. The Commission may, by regulation, exempt a State or local requirement from preemption if it finds that the State or local requirement affords a significantly higher degree of protection than the Commission's statute, standard, or regulation, and that it does not unduly burden interstate commerce. Such findings must be included in any exemption regulation.

§ 1061.4 Threshold requirements for applications for exemption.

(a) The Commission will consider an application for preemption on its merits, only if the application demonstrates all of the following:

(1) The State or local requirement has been enacted or issued in final form by an authorized official or instrumentality of the State or local government. For purposes of this section, a State or local requirement may be considered to have been enacted or issued in final form even though it is preempted by a Commission standard or regulation.

(2) The applicant is an official or instrumentality of a State or local government having authority to act for, or on behalf of, that government in applying for an exemption from preemption for the safety requirement referred to in the application.

(3) The State or local requirement is preempted under a Commission statutory preemption provision by a Commission statute, standard, or regulation. A State or local requirement is preempted if the following tests are met:

(i) There is a Commission statute, standard, or regulation in effect that is